

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

WILLIAM C. CARPENTER, JR.  
JUDGE

NEW CASTLE COUNTY COURTHOUSE  
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May 26, 2010

Jason C. Cohee, Esquire  
Department of Justice  
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John R. Garey, Esquire  
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RE: State of Delaware v. Sergio Gomez  
ID No. 0905010691

Submitted: May 12, 2010  
Decided: May 26, 2010

On Defendant's Motion For a New Trial - DENIED  
On Defendant's Motion for an Evidentiary Hearing - DENIED

Dear Counsel:

The Court has before it Defendant's Motion for a New Trial and a Motion for an Evidentiary Hearing. For the reasons set forth below, the Motions will be denied.

The Defendant first asserts that he was unfairly prejudiced when the young child victim entered the courtroom holding a teddy bear which she held during the length of her testimony. Counsel asserts he did not object at the time since he did not want to be viewed in a bad light as the one who forced the young child to give up her security animal. The fallacy in Defendant's argument is that there was clearly an opportunity for counsel to object and raise the issue with the Court before her testimony began. The Court questioned the young victim outside the presence of the jury prior to her testimony to ensure she appreciated the difference between right and wrong and the importance of telling the truth in the courtroom. If counsel had a

concern, he should have raised it with the Court at that time. There was no objection made, and the Court finds that there was no prejudice by this conduct.<sup>1</sup> This young girl was obviously traumatized by the conduct of the Defendant, but in spite of the difficulty of coming into a courtroom full of strangers to relay what had occurred, the testimony of this 9 year old was compelling and convincing. It was the impact of what she said during her testimony, and not the teddy bear, that convicted the Defendant.

Next, the Defendant argues that a new trial should be granted because of statements made during the trial by Sylvia Calderon, the mother of the alleged victim in the case. During her testimony on cross-examination the following colloquy occurred:

Q. Would you - - let me ask you this: Did your sister Janet have a - - was her divorce from Sergio Gomez very bitter and acrimonious?

A. I don't think so, no. She's not the type of person who likes to fight. She's very calm. She likes thing to be right, so she told him that she was leaving him because he had committed a crime, and with not just my daughter, but also my niece.

Q. Did Janet ever talk to you about her custody situation with her husband Sergio?

A. She only said that she was asking for custody because he could hurt the children and she was scared for them.

Q. My question is she talked to you about the custody issue?

A. There was no problem. She only told me that she wanted the custody of the children so that she could protect them.

Mr. Garey: I have no other questions.

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<sup>1</sup> The Delaware General Assembly has also stated that "additional consideration" should be given to child witnesses when involved in Superior Court criminal proceedings; *see* 11 *Del. C.* § 5131.

Mr. Cohee: I have nothing further, Your Honor.

At the conclusion of this testimony, counsel approached sidebar and after the Court excused the jury, requested a mistrial regarding the statements that had been made by Ms. Calderon. The Court had previously ruled that the Defendant's prior conviction in New Jersey for a similar sex offense could not be admitted and counsel asserts this reference to the "niece" violated that ruling.

First, it is important to put this line of questioning into some perspective. The defense in this case was that not only was the allegation made in this case false but was the product of a bitter divorce between the witness's sister and the Defendant. The defense went to great lengths to attempt to establish that the two sisters had conspired to have their children make allegations of sexual abuse so that they could obtain an advantage in any custody or support litigation that followed. The defense even put on the children of the victim's aunt to establish that they had previously made such allegations at the request of the sisters that were false.

When read in this context, the Court believes there were two reasonable interpretations that could have been made by the jury as to the testimony that forms the basis of this motion. First, the comment was simply a further attempt to continue the conspiracy efforts by the sisters to place the Defendant in an unfavorable light as a result of the bitter divorce that had occurred. It would be further reasonable to infer that these comments were simply in line with the comments other children had testified to that they had been asked to lie about sexual encounters with the Defendant and his brother by the sisters. The other possible understanding by the jury would be that the witness's sister was simply concerned about the safety of her own children as a result of what had allegedly occurred to the witness's daughter and the sister was divorcing the Defendant to protect her own children.

The Court believes neither of these interpretations warrant a mistrial nor does the Court believe there was any intentional effort to violate its previous order. The specifics of the Defendant's prior conviction were not given to the jury nor does the Court believe it is a fair interpretation of the statements in the context in which they were given that the Defendant had been convicted of some other offense. The Court offered to give a curative instruction, but in deference to counsel's desire not to highlight the issue further, it agreed not to give such an instruction. The Court believes this was an appropriate decision by counsel and frankly in light of the significant testimony by the defense of the alleged efforts to put the Defendant and his brother in sexually compromising positions, this isolated statement had no bearing on the outcome of this trial.

From the Court's perspective, the Defendant was convicted because the testimony of the 9 year old victim was believable and compelling and the effort to paint her as simply a manipulative child was unconvincing. Most of the remaining testimony offered during this trial was simply an unsuccessful attempt to convince the jury that the Defendant, and not the child, was the victim here. Any objective witness to the trial would have found, like the jury, that the attempt to discredit this 9 year old child failed miserably.

Finally, the Defendant has requested a hearing asserting that a relative of the alleged victim had been given \$50 to testify at the trial. While this individual did not testify, the Defendant asserts it raises the issue as to whether a similar inducement was given to the victim in this matter. It is the Court's view that this is simply a desperate attempt by a dysfunctional family to create issues where none exist. The Motion fails to allege any misconduct related to the testimony of the victim Samantha Calderon and the Court refuses to be a conduit for the he said/she said world of this family. The assertions in the Motion fail to raise issues that mandate an evidentiary hearing and that request will be denied.<sup>2</sup>

Based upon the above reasoning, the Motion For a New Trial as well as the Motion for an Evidentiary Hearing is hereby DENIED.

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.  
Judge William C. Carpenter, Jr.

WCCjr:twp

cc: Kent County Prothonotary

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<sup>2</sup> There is nothing to suggest that the defense would have been unaware of Ms. Lara driving her children to school in spite of an assertion of being legally blind that would prevent them from questioning her about this matter during trial. However, even if they were unaware, it would not have been a significant area for inquiry and certainly does not rise to a level that would merit an evidentiary hearing.